

(H) This paragraph shall cease to be effective five years after November 24, 2003.

(Pub. L. 93-400, § 37, as added Pub. L. 104-106, div. D, title XLIII, § 4307(a)(1), Feb. 10, 1996, 110 Stat. 666; amended Pub. L. 108-136, div. A, title XIV, § 1412(b), Nov. 24, 2003, 117 Stat. 1664; Pub. L. 109-163, div. A, title VIII, § 821(a), (b)(1), Jan. 6, 2006, 119 Stat. 3386.)

REFERENCES IN TEXT

Section 5051(c) of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (b)(3), is section 5051(c) of Pub. L. 103-355, which is set out as a note under section 263 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-163, § 821(b)(1), substituted “Except as provided in subsection (h)(3) of this section, this section” for “This section”.

Subsec. (h)(3)(A). Pub. L. 109-163, § 821(a)(1), substituted “, except as provided in subparagraph (D)” for “other than the Department of Defense”.

Subsec. (h)(3)(D) to (H). Pub. L. 109-163, § 821(a)(2), added subpar. (D) and redesignated former subpars. (D) to (G) as (E) to (H), respectively.

2003—Subsec. (h)(3). Pub. L. 108-136 added par. (3).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-163, div. A, title VIII, § 821(d), Jan. 6, 2006, 119 Stat. 3386, provided that: “The amendments made by this section [amending this section and repealing provisions set out as a note under this section] shall apply with respect to fees collected under contracts described in section 37(h)(3)(B) of the Office of Federal Procurement Policy Act (41 U.S.C. 433(h)(3)(B)) after the date of the enactment of this Act [Jan. 6, 2006].”

EFFECTIVE DATE

For effective date and applicability of section, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 251 of this title.

DEFENSE ACQUISITION UNIVERSITY FUNDING

Pub. L. 109-163, div. A, title VIII, § 821(c), Jan. 6, 2006, 119 Stat. 3386, provided that: “Amounts transferred under section 37(h)(3)(D) of the Office of Federal Procurement Policy Act [41 U.S.C. 433(h)(3)(D)] (as amended by subsection (a)) for use by the Defense Acquisition University shall be in addition to other amounts authorized for the University.”

PURPOSES OF 2003 AMENDMENT

Pub. L. 108-136, div. A, title XIV, § 1412(a), Nov. 24, 2003, 117 Stat. 1664, provided that: “The purposes of this section [amending this section and enacting provisions set out as notes under this section] are to ensure that the Federal acquisition workforce—

“(1) adapts to fundamental changes in the nature of Federal Government acquisition of property and services associated with the changing roles of the Federal Government; and

“(2) acquires new skills and a new perspective to enable it to contribute effectively in the changing environment of the 21st century.”

INAPPLICABILITY OF SUBSECTION (h)(3) TO DEPARTMENT OF DEFENSE ACQUISITION WORKFORCE

Pub. L. 108-136, div. A, title XIV, § 1412(c), Nov. 24, 2003, 117 Stat. 1665, which provided that section 1412 of Pub. L. 108-136 was inapplicable to the acquisition workforce of the Department of Defense and that fees covered by subsec. (h)(3) of this section were to be reduced by 5 percent to reflect the Department's nonparticipation in the acquisition workforce training fund, was repealed by Pub. L. 109-163, div. A, title VIII, § 821(b)(2), Jan. 6, 2006, 119 Stat. 3386.

ACQUISITION WORKFORCE RECRUITMENT PROGRAM

Pub. L. 108-136, div. A, title XIV, § 1413, Nov. 24, 2003, 117 Stat. 1665, provided that:

“(a) DETERMINATION OF SHORTAGE CATEGORY POSITIONS.—For purposes of sections 3304, 5333, and 5753 of title 5, United States Code, the head of a department or agency of the United States (other than the Secretary of Defense) may determine, under regulations prescribed by the Office of Personnel Management, that certain Federal acquisition positions (as described in section 37(g)(1)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 433(g)(1)(A))) are shortage category positions in order to use the authorities in those sections to recruit and appoint highly qualified persons directly to such positions in the department or agency.

“(b) TERMINATION OF AUTHORITY.—The head of a department or agency may not appoint a person to a position of employment under this section after September 30, 2007.

“(c) REPORT.—Not later than March 31, 2007, the Director of the Office of Personnel Management, in consultation with the Administrator for Federal Procurement Policy, shall submit to Congress a report on the implementation of this section. The report shall include—

“(1) a list of the departments and agencies that exercised the authority provided in this section, and whether the exercise of the authority was carried out in accordance with the regulations prescribed by the Office of Personnel Management;

“(2) the Director's assessment of the efficacy of the exercise of the authority provided in this section in attracting employees with unusually high qualifications to the acquisition workforce; and

“(3) any recommendations considered appropriate by the Director on whether the authority to carry out the program should be extended.”

ARCHITECTURAL AND ENGINEERING ACQUISITION WORKFORCE

Pub. L. 108-136, div. A, title XIV, § 1414, Nov. 24, 2003, 117 Stat. 1666, provided that: “The Administrator for Federal Procurement Policy, in consultation with the Secretary of Defense, the Administrator of General Services, and the Director of the Office of Personnel Management, shall develop and implement a plan to ensure that the Federal Government maintains the necessary capability with respect to the acquisition of architectural and engineering services to—

“(1) ensure that Federal Government employees have the expertise to determine agency requirements for such services;

“(2) establish priorities and programs (including acquisition plans);

“(3) establish professional standards;

“(4) develop scopes of work; and

“(5) award and administer contracts for such services.”

§ 434. Modular contracting for information technology

(a) In general

The head of an executive agency should, to the maximum extent practicable, use modular contracting for an acquisition of a major system of information technology.

(b) Modular contracting described

Under modular contracting, an executive agency's need for a system is satisfied in successive acquisitions of interoperable increments. Each increment complies with common or commercially accepted standards applicable to information technology so that the increments are compatible with other increments of information technology comprising the system.

(c) Implementation

The Federal Acquisition Regulation shall provide that—

(1) under the modular contracting process, an acquisition of a major system of information technology may be divided into several smaller acquisition increments that—

(A) are easier to manage individually than would be one comprehensive acquisition;

(B) address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable solutions for attainment of those objectives;

(C) provide for delivery, implementation, and testing of workable systems or solutions in discrete increments each of which comprises a system or solution that is not dependent on any subsequent increment in order to perform its principal functions; and

(D) provide an opportunity for subsequent increments of the acquisition to take advantage of any evolution in technology or needs that occur during conduct of the earlier increments;

(2) a contract for an increment of an information technology acquisition should, to the maximum extent practicable, be awarded within 180 days after the date on which the solicitation is issued and, if the contract for that increment cannot be awarded within such period, the increment should be considered for cancellation; and

(3) the information technology provided for in a contract for acquisition of information technology should be delivered within 18 months after the date on which the solicitation resulting in award of the contract was issued.

(Pub. L. 93-400, § 38, formerly § 35, as added Pub. L. 104-106, div. E, title LII, § 5202(a), Feb. 10, 1996, 110 Stat. 690; renumbered § 38, Pub. L. 104-201, div. A, title X, § 1074(d)(1), Sept. 23, 1996, 110 Stat. 2660.)

EFFECTIVE DATE

Section effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104-106, Feb. 10, 1996, 110 Stat. 702.

§ 435. Levels of compensation of certain contractor personnel not allowable as costs under certain contracts**(a) Determination required**

For purposes of section 2324(e)(1)(P) of title 10 and section 256(e)(1)(P) of this title, the Administrator shall review commercially available surveys of executive compensation and, on the basis of the results of the review, determine a benchmark compensation amount to apply for each fiscal year. In making determinations under this subsection the Administrator shall consult with the Director of the Defense Contract Audit Agency and such other officials of executive agencies as the Administrator considers appropriate.

(b) Benchmark compensation amount

The benchmark compensation amount applicable for a fiscal year is the median amount of the compensation provided for all senior executives

of all benchmark corporations for the most recent year for which data is available at the time the determination under subsection (a) of this section is made.

(c) Definitions

In this section:

(1) The term “compensation”, for a fiscal year, means the total amount of wages, salary, bonuses and deferred compensation for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in an employer’s cost accounting records for the fiscal year.

(2) The term “senior executives”, with respect to a contractor, means the five most highly compensated employees in management positions at each home office and each segment of the contractor.

(3) The term “benchmark corporation”, with respect to a fiscal year, means a publicly-owned United States corporation that has annual sales in excess of \$50,000,000 for the fiscal year.

(4) The term “publicly-owned United States corporation” means a corporation organized under the laws of a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States the voting stock of which is publicly traded.

(5) The term “fiscal year” means a fiscal year established by a contractor for accounting purposes.

(Pub. L. 93-400, § 39, as added Pub. L. 105-85, div. A, title VIII, § 808(c)(1), Nov. 18, 1997, 111 Stat. 1837; amended Pub. L. 105-261, div. A, title VIII, § 804(c)(1), Oct. 17, 1998, 112 Stat. 2083.)

CODIFICATION

Another section 39 of Pub. L. 93-400 was renumbered section 40 and is classified to section 436 of this title.

AMENDMENTS

1998—Subsec. (c)(2). Pub. L. 105-261 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The term ‘senior executive’, with respect to a corporation, means—

“(A) the chief executive officer of the corporation or any individual acting in a similar capacity for the corporation;

“(B) the four most highly compensated employees in management positions of the corporation other than the chief executive officer; and

“(C) in the case of a corporation that has components which report directly to the corporate headquarters, the five most highly compensated individuals in management positions at each such component.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-261 applicable with respect to costs of compensation of senior executives incurred after Jan. 1, 1999, under covered contracts entered into before, on, or after Oct. 17, 1998, see section 804(d) of Pub. L. 105-261, set out as a note under section 2324 of Title 10, Armed Forces.

EFFECTIVE DATE

Section 808(e) of Pub. L. 105-85 provided that: “The amendments made by this section [enacting this section and amending section 256 of this title and section 2324 of Title 10, Armed Forces] shall—

“(1) take effect on the date that is 90 days after the date of the enactment of this Act [Nov. 18, 1997]; and